

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NADINE A. DUNLAP and DEPARTMENT OF THE AIR FORCE,
AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK

*Docket No. 01-529; Submitted on the Record;
Issued October 2, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

Appellant, then a 44-year-old environmental protection assistant, filed a claim on August 26, 1998 alleging that her emotional condition was causally related to factors of her federal employment. By decision dated March 5, 1999, the Office denied appellant's claim for benefits on the grounds that the evidence of record failed to establish any compensable factors of employment.

Appellant requested a hearing and submitted additional factual and medical evidence. By decision dated August 13, 1999, an Office hearing representative found that the Office had made appropriate findings of fact concerning compensable and noncompensable factors of employment and incidents not proven to have occurred. Appellant's additional arguments and evidence were also found to be noncompensable factors of employment. Accordingly, the denial of benefits was affirmed. By decision dated August 29, 2000, the Office denied appellant's request for reconsideration on the ground that the evidence submitted was repetitious and thus insufficient to reopen the case for merit review.

The Board has jurisdiction only over the August 29, 2000 decision, which denied appellant's request for review of the merits of the August 13, 1999 decision, the last merit decision of record. Because more than one year has elapsed between the issuance of the Office's decisions dated March 5 and August 13, 1999 and November 24, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the prior decisions of March 5 and August 13, 1999.¹

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

The Board finds that the Office acted within its discretion in denying appellant's request for reconsideration of its August 13, 1999 decision, which determined that appellant's emotional condition was not causally related to factors of her employment.

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,³ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.⁵

In this case, appellant's claim was denied on the basis that the evidence failed to establish that the claimed emotional condition arose in and out of the performance of appellant's federal duties. In her reconsideration request of July 29, 2000, appellant essentially restated her original assertions and arguments, which were presented to the Office hearing representative. These arguments are thus repetitious and, therefore, insufficient to require an reopening of appellant's case for further review of the merits.

The majority of the documents submitted are either previously of record or duplicative of evidence already in the record. These include previously submitted copies of an excellence award performance appraisals witness statements attesting to appellant's character and descriptions of the various assignments appellant performed part of a previously submitted discrimination complaint.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ *John E. Watson*, 44 ECAB 612, 614 (1993).

Also submitted was a May 26, 2000 letter from Dr. Thomas L. McNeil, appellant's treating psychiatrist, who stated that appellant had been severely anxious due to reported job stress from April to September 1998, when she resigned from her employment. The May 26, 2000 report from Dr. McNeil, although new, is irrelevant to the issue in this case, whether appellant has established a compensable factor of employment. The Board has held that the submission of evidence which does not address the particular issue involved is of little probative value.⁶ Thus, the documents appellant submitted with her reconsideration request are not relevant to establishing her claim and, therefore, do not constitute a basis for reopening this case.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁷ Appellant has made no such showing here.

The August 29, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 2, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *John E. Watson*, 44 ECAB 612, 614 (1993).

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).